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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/966,676	09/28/2001	Brendan Traw	42390P11771	4988

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EXAMINER

HUYNH, SON P

ART UNIT PAPER NUMBER

2623

DATE MAILED: 08/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/966,676

Applicant(s)

TRAW ET AL.

Examiner

Son P. Huynh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 September 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 February 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>02-17-02</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings are objected to because the information/text in figures 13-14 is not clear. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 23-32 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 23-32 recite “machine-readable medium having instructions stored thereon, which when executed by a processor cause the processor to:” which is merely a set of instructions capable of being executed by a computer/processor, the “machine-readable medium having instructions stored thereon, **which when** executed...” itself is not a process, machine, manufacture, or a composition of matter. It is treated as **nonstatutory functional descriptive material**. (See MPEP 2601[R-3], IV, B, 1(a).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Labeeb et al. (US 2003/0093792) in view of Barrett et al. (US 6,005,597).

Regarding claim 1, Labeeb discloses a method, comprising:

receiving meta-data broadcast by a server system, the meta-data including descriptions of a plurality of data files currently being broadcasted or to be broadcasted by the server system (e.g. receiving “attribute information”/program information and the schedule of the television programs broadcast by the broadcast head end, the “attribute information” including program title, channel, category, start time, duration, etc. plurality of data files currently being broadcasted or to be broadcasted by the broadcast head end – see including, but are not limited to, figure 43, paragraphs 0049-0051,0074);

selecting in response to a content rating a data file described by the meta-data, the content rating generated responsive to data files previously accessed (i.e., selecting, in response to content rating in personal reference database 116, a digital program described by the “attribute information”/program information, the content rating in personal reference database is generated by user’s viewing habits – see including, but are not limited to, paragraphs 0067, 0073, 0076, 0084, 0104, 0152); and

displaying the selected data file on a personalized channel on a display device (displaying the selected recorded program/currently broadcast program on desired channel, selected by the user, on a display device – i.e. television monitor 108 – figure 43, paragraphs 0049, 0053, 0243). However, Labeeb does not explicitly disclose the content rating in personal reference database 116 is stored as table.

Barrett, in an analogous art, discloses monitoring the viewing preferences of the viewer to create a dynamic viewing profile that is used to rate available program, wherein the content rating is stored as content rating table in viewing profile (see including, but are not limited to, figure 3, col. 2, lines 16-43, col. 4, line 28-col. 5, line 4). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Labeeb to use the teaching as taught by Barrett in order to at least allow the data in the viewer profile to be managed easily.

Regarding claim 2, Labeeb in view of Barrett teaches a method as discussed in the rejection of claim 1. Labeeb further discloses the selected data file is one of a currently broadcast data file and a stored data file (i.e. stored program or currently broadcast program – see including, but is not limited to, paragraph 0049).

Regarding claim 3, Labeeb in view of Barrett teaches a method as discussed in the rejection of claim 1. Labeeb further discloses rating data files in response to reading the content rating in personal reference database (see including, but are not limited to, paragraphs 0152-0155).

Alternatively, Barrett also further teaches rating data files in response to reading the content rating table (see including, but are not limited to, col. 3, line 65-col. 4, line 23, col. 10, lines 43-50).

Regarding claim 4, Labeeb in view of Barrett teaches a method as discussed in the rejection of claim 3. Labeeb further discloses selecting a data file based upon the rating of the data file and storing the selected data file in a storage device to create a stored data file (e.g. automatically select a program to record in storage device (i.e. device 106, 35- figures 26A, 43) based upon the rating of the data file – see including, but are not limited to, paragraphs 0150, 0233).

Regarding claim 5, Labeeb in view of Barrett teaches a method as discussed in the rejection of claim 4. Labeeb further discloses comparing the ratings of currently broadcasted data files and stored data files; and selecting the currently broadcasted data file or stored data file with the highest rating (e.g. compare the stored program and currently broadcast program, if the stored program has lower rating than the currently broadcast program, select the currently broadcast and delete the stored program – see including, but are not limited to, paragraphs 0154-0155).

Regarding claim 6, Labeeb in view of Barrett teaches a method as discussed in the rejection of claim 5. Labeeb further discloses displaying the selected data file on a personalized channel on a display device (as a result of user selection of desired channel, the program on the selected channel is displayed on a display device such as television monitor 108 – paragraphs 0049, 0053, 0232, figure 43).

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Regarding claim 7, Labeeb in view of Barrett teaches a method as discussed in the rejection of claim 4. Labeeb further discloses a currently broadcasted data file is an immediate viewing data file and is automatically selected (broadly interpreted as automatically select currently broadcast television program (i.e. Seinfeld episode)/news on NBC channel, etc.– see including, but are not limited to, paragraphs 0049, 0087, 0155, 0158, 0228).

Regarding claim 8, Labeeb in view of Barrett teaches a method as discussed in the rejection of claim 7. Labeeb further discloses if an immediate viewing data file is not selected then a stored data file is selected (broadly interpreted as user change the channel from currently broadcast television program to recorded program - see including, but is not limited to, paragraph 0049, figure 43).

Regarding claim 9, Labeeb in view of Barrett teaches a method as discussed in the rejection of claim 8. Labeeb further discloses if neither an immediate viewing data file or a stored data file is selected, then a best current data file option is selected (e.g. broadly interpreted as if neither currently broadcast program (i.e. Seinfeld or NEWS program on the NBC channel, etc.) is not selected (for example, the Seinfeld or NEWS program on the NBC channel is not currently available, or the highest rating is not selected due to memory space available), or a stored data file is selected, then program/data file, associated with the Seinfeld episode or News program on the NBC channel or file that has next rating level, such as premier episode of Seinfeld, or NBC channel, or thirty

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minute program is selected – see including, but are not limited to, paragraphs 0085-0087, 0091, 0093, 0152-0153).

Regarding claim 10, the additional limitation as claimed corresponds to the additional limitation as claimed in claim 6, and are analyzed as discussed with respect to the rejection of claim 6.

Regarding claim 11, Labeeb in view of Barrett teaches a method as discussed in the rejection of claim 1. Labeeb further discloses the plurality of data files comprises at least one of video information, graphical information, audio information, multimedia information, or textual information (i.e. at least one of television video content, audio content, attribute information, or program guide information – paragraphs 0049, 0051, 0091, 0102, 0199, 0228, 0232).

Regarding claim 12, the limitations of the apparatus as claimed correspond to the limitations of the method as claimed in claim 1, and are analyzed as discussed with respect to the rejection of claim 1. Wherein claimed “processor...” is met by the preferences agent 110 and program source switch; the claimed “communication interface...” is met by interface to the network (i.e. tuner circuitry) that communicate with the network for receiving attribute information/program information from the broadcast headend; apparatus must comprises a storage device (i.e. ROM, RAM, etc.,) coupled to processor, the storage device having a sequence of instructions stored therein (i.e.

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software programs/applications) so that when executed by the processor cause the processor to perform the functions as discussed in the rejection of claim 1 (see including, but are not limited to, figures 34, 43-44, paragraphs 0149, 0152, , 0204-0210, , 0232-0243).

Regarding claims 13-22, the additional limitations of the apparatus as claimed correspond to the additional limitations of the method as claimed in claims 2-11, and are analyzed as discussed with respect to the rejections of claims 2-11.

Regarding claims 23-32, the limitations as claimed are directed toward embodying the method of claims 1-10 in "computer readable medium". A "computer readable medium" having instructions stored thereon, must be used so that when executed by the processor cause the processor to perform the procedures as discussed in the method claims 1-10.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Dudkiewicz (US 2002/0100046 A1) discloses system and method for determining the desirability of video program events.

Herz et al. (US 5,758,257) discloses system and method for scheduling broadcast of and access to video programs and other data using customer profile.

Ellis et al. (US 6,898,762) discloses client server electronic program guide.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son P. Huynh whose telephone number is 571-272-7295. The examiner can normally be reached on 9:00 - 6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher S. Kelley can be reached on 571-272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Son P. Huynh

August 8, 2006


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